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**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

DIESEL S.P.A.; and DIESEL U.S.A., INC.,

Plaintiffs,

v.

DIESEL POWER GEAR, LLC,

Defendant

CIVIL ACTION NO. 1:19-CV-9308-MKV

DIESEL POWER GEAR’S MOTION FOR SUMMARY JUDGMENT

Defendant Diesel Power Gear, LLC (“Diesel Power Gear” or “Defendant”) hereby moves for summary judgment on all of Plaintiffs’ causes of action (infringement of registered trademarks, trademark dilution, federal unfair competition, and New York common law unfair competition).

Diesel Power Gear’s use of “diesel” is not trademark infringement (registered or unfair competition) because (i) using “diesel” descriptively to refer to diesel trucks is a protected fair use, (ii) mutually exclusive trade channels precludes consumer confusion, and (iii) for New York unfair

competition Diesel Power has not used “diesel” in bad faith and Plaintiffs have no evidence of consumer confusion. Plaintiffs cannot prevail on dilution-by-blurring because their circumstantial evidence shows niche fashion-industry fame at most. Finally, even if the Court found infringement or unfair competition, lost profits are unavailable because Plaintiffs did not willfully infringe.

I. STATEMENT OF FACTS

Plaintiffs sell expensive jeans and other apparel branded as “diesel” or derivative trademarks. Many pairs of Plaintiffs’ jeans cost more than \$200 and even \$300 (and some more than \$400 and even \$500). The price for many of Plaintiffs’ t-shirts is around \$150, and some hoodies are more than \$250. In the United States, Plaintiffs sell through their website and high-end retailers. Plaintiffs’ target consumers are “young, urban professionals, who like fashion and denim, as well as dressing comfortably.” Plaintiffs’ apparel, brand, and marketing have nothing to do with diesel trucks. Plaintiffs have registered and common-law rights in “diesel” and derivative marks that predate Defendant Diesel Power Gear’s use of “diesel” as described herein.

Diesel Power Gear was formed in 2013 by Dave Sparks, Dave Kiley, and Josh Stuart. Dave Sparks and Dave Kiley are the stars of a Discovery Channel television show about building and repairing recreational diesel trucks. Diesel Power Gear’s business model comprises building one-of-a-kind diesel trucks and giving them away in drawings. Diesel Power Gear incentivizes purchase of diesel-truck-related apparel, parts, and accessories by providing an entry into a monthly diesel truck giveaway for every five dollars spent on apparel, parts, and accessories at dieselpowergear.com. Typical pricing on dieselpowergear.com is \$30 for a t-shirt, \$55 for a hoodie, \$60 for jeans (branded “power gear”), and \$30 for a ballcap. Almost all of Diesel Power Gear’s revenue is from such sales on dieselpowergear.com. Diesel Power Gear uses the word “diesel” in its URL (dieselpowergear.com), in a sister URL for an online diesel truck and part

classifieds at dieselsellerz.com, and in branding for some of its apparel and accessories as “diesel power gear.” All of Diesel Power Gear’s business, products, and activities are centered around promoting and celebrating diesel trucks.

Diesel Power Gear’s products and Plaintiffs’ products have never been sold in the same brick-and-mortar location or on the same website, and the Parties have no evidence of actual consumer confusion resulting from Diesel Power Gear’s use of “diesel” in “diesel power gear.”

II. ARGUMENT

The Court should grant summary judgment in Diesel Power Gear’s favor on all Plaintiffs’ causes of action because, based on the evidence of record, a reasonable factfinder could not find in Plaintiffs’ favor. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “To defeat a motion for summary judgment, the non-moving party must identify probative, admissible evidence from which a reasonable factfinder could find in his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57 (1986).

For the trademark infringement causes of action (infringement of registered trademark, Lanham Act unfair competition, and New York unfair competition), (i) Diesel Power Gear’s use of “diesel” to reference diesel trucks is protected as a descriptive fair use; (ii) mutually exclusive trade channels prevents consumer confusion; and (iii) for New York unfair competition, Plaintiffs have no evidence that Diesel Power Gear used “diesel” in bad faith to misappropriate Plaintiffs’ goodwill and money damages are unavailable because Plaintiffs have no evidence of actual confusion. For dilution-by-blurring, Plaintiffs’ circumstantial evidence—even viewed in the light most favorable to Plaintiffs—shows that Plaintiffs’ trademarks enjoy at most niche fame

in the fashion industry, but do not enjoy recognition tantamount to “household-name” or “widespread recognition by the general public” across all market segments.

A. Diesel Power Gear’s descriptive use of “diesel” is a protected fair use.

Diesel Power Gear’s use of “diesel” to reference diesel trucks and products associated with diesel trucks is protected as a descriptive fair use that cannot give rise to liability for trademark infringement.

It is a defense to trademark infringement that “the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, . . . of a term [] which is descriptive of and used fairly and in good faith only to describe the goods or services of such party.” 15 U.S.C. § 1115(b)(4). “The fair-use defense, in essence, forbids a trademark registrant to appropriate a descriptive term for its exclusive use and so prevent others from accurately describing a characteristic of their goods.” *Hard Candy, LLC v. Anastasia Beverly Hills, Inc.*, 921 F.3d 1343, 1363 (11th Cir. 2019) (internal quotation marks and citation omitted). “A junior user is always entitled to use a descriptive term in good faith in its primary, descriptive sense other than as a trademark.” *Marketquest Grp., Inc. v. BIC Corp.*, 862 F.3d 927, 935 (9th Cir. 2017) (internal quotation marks and citation omitted). “[S]ome possibility of consumer confusion must be compatible with fair use.” *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 121 (2004).

Diesel Power Gear uses the word “diesel” in several contexts, all of which describe goods and/or services for diesel trucks. Diesel Power Gear uses the word “diesel” as a descriptive component of “diesel power gear.” As used in dieselpowergear.com, “diesel” describes a website for *diesel* truck giveaways, selling *diesel* truck parts and accessories, and selling apparel and gear that promote and celebrate *diesel* trucks. As used in “diesel power gear” for apparel, “diesel”

describes apparel that celebrates and promotes *diesel* trucks. As used in *dieselevatorz.com*, “diesel” describes a website and service for a classifieds platform to facilitate buying and selling *diesel* trucks and parts. Although “diesel power gear” is often used as a trademark in a source-identifying manner, the appearance of “diesel” as an element of “diesel power gear” does not carry independent source-identification weight, but instead describes the diesel-centric services and products that Diesel Power Gear provides.

The Second Circuit applied trademark fair use to resolve this issue 24 years ago under substantively indistinguishable facts. *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4 (2d Cir. 1976). In *Abercrombie*, the New York retail store Abercrombie & Fitch (“Abercrombie”) owned trademark registrations for the mark SAFARI for goods including “[m]en’s and [w]omen’s outer garments, including hats . . . and shoes.” *Id.* at 7. Subsequent to Abercrombie’s registrations, New York retail store Hunter’s World began selling three styles of boots imported from Africa and for use on safaris, named “Camel Safari,” “Hippo Safari,” and “Safari Chukka.” *Id.* at 12.

The Second Circuit held that Abercrombie “had no right to prevent Hunter’s World from descriptively using the word ‘Safari’ to describe its business [of selling clothing, gear, and travel planning for safaris in Africa.]” *Id.* at 8. Parroting the Second Circuit’s holding, “[Plaintiffs] [have] no right to prevent [Diesel Power Gear] from using the word [‘diesel’] to describe its business of [giving away diesel trucks, selling apparel promoting and celebrating diesel trucks, and maintaining a classifieds service for diesel trucks].”

The Second Circuit then rejected Abercrombie’s contention that its trademark registrations for “safari” for shoes precluded all uses of “safari” by another on shoes: “‘Camel Safari,’ ‘Hippo Safari’ and ‘Safari Chukka’ were devoted by H[unter’s] W[orld] to a purely

descriptive use on its boots, [and] H[unter's] W[orld therefore] has a defense against a charge of infringement . . . on the basis of 'fair use.'" *Id.* at 11.

Applying 15 U.S.C. § 1115, the Second Circuit found that Hunter's World's overall business focused on safaris and, therefore, its use of "safari" on boots was descriptive and innocent:

Here, Lee Expeditions, Ltd., the parent company of HW, has been primarily engaged in arranging safaris to Africa since 1959; Robert Lee, the president of both companies, is the author of a book published in 1959 entitled "Safari Today The Modern Safari Handbook" and has, since 1961, booked persons on safaris as well as purchased safari clothing in Africa for resale in America. These facts suffice to establish, absent a contrary showing, that defendant's use of "Safari" with respect to boots was made in the context of hunting and traveling expeditions and not as an attempt to garner A&F's good will. . . . H[unter's] W[orld]'s use of "Camel Safari," "Hippo Safari," and "Safari Chukka" as names for various boots imported from Africa constituted a purely descriptive use to apprise the public of the type of product by referring to its origin and use.

Id. at 12 (internal quotation marks omitted).

The facts and legal principles are so similar that the Second Circuit's analysis applies by merely substituting facts and party names:

Here, [Diesel Power Gear] has been primarily engaged in [building custom diesel trucks] since [2012]; [Dave Sparks and Dave Kiley], the [principles] of [Diesel Power Gear], [are the stars of a television show on Discovery Channel called "Diesel Brothers," in which they build custom diesel trucks and are] the author[s] of a book published in [2017] entitled "[The Diesel Brothers: A Truckin' Awesome Guide to Trucks and Life]." These facts suffice to establish, absent a contrary showing, that defendant's use of "[diesel]" with respect to [apparel] was made in the context of [clothing to convey enthusiasm for diesel trucks and commentary on diesel trucks] and not as an attempt to garner [Plaintiffs'] good will. . . . [Diesel Power Gear's] use of "[diesel power gear]" for [clothing conveying an enthusiasm for diesel trucks] constituted a purely descriptive use to apprise the public of the type of product by referring to its [core association and message: diesel trucks.]

Id. at 12 (internal quotation marks omitted).

The Second Circuit summed it up nicely: “When plaintiff has chosen a mark with some descriptive qualities, [it] cannot altogether exclude some kinds of competing uses even when the mark is properly on the register.” *Id.* at 12-13 (citations omitted). Plaintiffs’ trademark registrations for “diesel” (or analogous common law rights) cannot prevent Diesel Power Gear from using the word “diesel” to reference the diesel trucks that are the focus and inspiration for a website and apparel for to promote and celebrate diesel trucks.

B. Consumer confusion is highly unlikely because Diesel Power Gear’s trade channels starkly differ from Plaintiffs’ trade channels.

Likelihood of consumer confusion—the central inquiry for trademark infringement, Lanham Act unfair competition, and New York unfair competition—is virtually nonexistent because Plaintiffs and Diesel Power Gear’s respective trade channels do not overlap.

Diesel Power Gear’s use of “diesel” infringes Plaintiffs’ trademark rights only if such use is likely to cause consumer confusion. *Capri Sun GmbH v. Am. Beverage Corp.*, No. 19 CIV. 1422 (PAE), 2019 WL 5558481, at *14 (S.D.N.Y. Oct. 29, 2019) (citations omitted). Consumer confusion factors include “the strength of the Plaintiff’s mark; the degree of similarity between the Plaintiff’s and Defendant’s marks; the proximity of the products or services in the marketplace; evidence of actual confusion; the Defendant’s good faith in adopting its own mark; the quality of the defendant’s product; and the sophistication of the relevant population of consumers.” *Id.* (citation omitted). “The pertinence of individual factors varies with the facts of the particular case.” *Guthrie Healthcare Sys. v. ContextMedia, Inc.*, 826 F.3d 27, 37 (2d Cir. 2016). The “proximity” factor “focuses on the extent to which the two products compete with each other” in light of “all aspects of the products, including price, style, intended uses, target

clientele, [and] distribution channels.” *SLY Magazine, LLC v. Weider Publications L.L.C.*, 529 F. Supp. 2d 425, 439 (S.D.N.Y. 2007).

Even assuming the strength of Plaintiffs’ marks and strong similarity between Plaintiffs’ and Diesel Power Gear’s respective marks, Diesel Power Gear’s use of “diesel power gear” is not likely to confuse consumers because Plaintiffs’ and Diesel Power Gear’s respective goods have no marketplace proximity. Plaintiffs sell high-priced fashion-oriented clothing through their website and through high-end brick-and-mortar retailers to “young, urban professionals, who like fashion and denim, as well as dressing comfortably.” Diesel Power Gear, in stark contrast, sells t-shirts, hoodies, and hats to diesel truck enthusiasts who want to win a diesel truck. Diesel Power Gear’s business model is designed around using truck giveaways to drive sales of t-shirts, hoodies, hats, and other gear. The apparel is a secondary consideration for customers of Diesel Power Gear. What they really want is to win a truck.

Plaintiffs sell jeans that often cost over \$300, t-shirts for \$150, and hoodies for \$200. Diesel Power Gear, in stark contrast, sells jeans for \$60, t-shirts for \$30, hoodies for \$55, and hats for \$30.

Plaintiffs sell in high-end retailers and on their own website. Diesel Power Gear, in stark contrast, sells exclusively through dieselpowergear.com (except for de minimis sales at its headquarters brick-and-mortar storefront). Plaintiffs’ apparel and Diesel Power Gear’s apparel have never been offered for sale in the same brick-and-mortar retail location or on the same website.

Simply put, a complete absence of any overlap in trade channels prevents any likelihood of confusion. *SLY Magazine, LLC v. Weider Publications L.L.C.*, 529 F. Supp. 2d 425, 439 (S.D.N.Y. 2007), *aff’d*, 346 F. App’x 721 (2d Cir. 2009) (citation omitted) (finding no likelihood

of confusion between two publications with identical titles (“SLY”) because one publication was a print magazine targeting over-forty men but the other was an online magazine targeting “younger women living in metropolitan areas”: “As the undisputed facts demonstrate, the two publications carried completely different stories that catered to different people and interests.”)

Because Plaintiffs’ and Diesel Power Gear’s respective trade channels are mutually exclusive, consumer confusion is unlikely as a matter of law.

C. Consumers are not likely to be confused when a word is not used as a trademark.

At least for the “DIESEL AF” t-shirt, consumer confusion is highly unlikely because “diesel” is used in a non-source-identifying manner, and instead communicates a message: “Diesel as fuck,” i.e., “diesel trucks are really cool. Because a non-source-identifying use cannot confuse or mislead a consumer as to source, judgment as a matter of law is appropriate for the “Diesel AF” t-shirt and for every other use of “diesel” in a non-source-identifying manner.

D. Summary judgment on Lanham Act unfair competition is appropriate for the same reasons as for trademark infringement.

The Court should grant summary judgment of no Lanham Act unfair competition for the same reasons established above for Plaintiff’s trademark infringement claim because unfair competition is substantively identical to trademark infringement. *Spin Master Ltd. v. Alan Yuan’s Store*, 325 F. Supp. 3d 413, 423 (S.D.N.Y. 2018) (explaining that “[t]he [unfair competition] test utilizes the same principles and standards as are used for trademark infringement claims”).

E. Plaintiffs' marks are not famous and therefore cannot be diluted by blurring.

Diesel Power Gear's use of "diesel" has not diluted (by blurring) Plaintiffs' trademark rights at least because Plaintiffs' trademarks are not famous. "There are 'five necessary elements to a claim of dilution: (1) the senior mark must be famous; (2) it must be distinctive; (3) the junior use must be a commercial use in commerce; (4) it must begin after the senior mark has become famous; and (5) it must cause dilution of the distinctive quality of the senior mark.'"

Museum of Modern Art v. MOMACHA IP LLC, 339 F. Supp. 3d 361, 380 (S.D.N.Y. 2018) (quoting *Nabisco, Inc. v. PF Brands, Inc.*, 191 F.3d 208, 215 (2d Cir. 1999)).

"A mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner." 15 U.S.C. § 1125(c)(2)(A). For fame, "a court may consider all relevant factors, including the following:"

- (i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.
- (ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.
- (iii) The extent of actual recognition of the mark.
- (iv) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

15 U.S.C. § 1125 (c)(2)(A).

Under the dilution-by-blurring statute, the senior mark "must possess more than niche fame," and must "carry a substantial degree of fame," which is "difficult to prove" and requires showing that a mark has "widespread recognition by the general public" to the extent that it "has become a household name." *Car Freshner Corp. v. Am. Covers, LLC*, 419 F. Supp. 3d 407, 446 (N.D.N.Y. 2019) (quoting *Burberry Ltd. v. Euro Moda, Inc.*, No. 08cv5781, 2009 WL 1675080,

at *11 (S.D.N.Y. June 10, 2009); *TCPIP Holding Co. v. Haar Communs. Inc.*, 244 F.3d 88, 99 (2d Cir. 2001); *Coach Servs. v. Triumph Learning, LLC*, 668 F.3d 1356, 1373 (Fed. Cir. 2012)). Niche fame, i.e., “fame limited to a particular channel of trade, segment of industry or service, or geographic region,” is insufficient for fame under the dilution statute. *Dan-Foam A/S v. Brand Named Beds, LLC*, 500 F. Supp. 2d 296, 307 n.90 (S.D.N.Y. 2007) (internal quotation marks and citation omitted). Fame requires that a mark have trademark significance even when encountered outside of its market segment. 4 McCarthy Trademarks § 24:104 (citing Restatement Third, Unfair Competition, § 25, comment e (1995)). ““A mark that evokes an association with a specific source only when used in connection with the particular goods or services that it identifies is ordinarily not sufficiently distinctive to be protected against dilution.”” 4 McCarthy Trademarks § 24:106 (quoting Restatement Third, Unfair Competition, § 25, comment e (1995)). “Dilution causes of action are restricted to those few truly famous marks like Budweiser beer, Camel cigarettes, Barbie Dolls, and the like.” *Glob. Brand Holdings, LLC v. Church & Dwight Co.*, No. 17-CV-6571 (KBF), 2017 WL 6515419, at *3 (S.D.N.Y. Dec. 19, 2017) (internal quotation marks and citation omitted)

Plaintiffs’ evidence falls far short of the standard for avoiding summary judgment on fame. At most, Plaintiff have shown that they have invested resources in advertising their apparel in their industry and that have had sales in their industry. But even if this circumstantial evidence were sufficient to establish fame, it would be merely niche fame in Plaintiffs’ own industry. Marketing expenditures “(even a lot of it),” “news articles, and editorials in mainstream publications . . . are simply not enough.” *Id.* at *5. (internal quotation marks and citation omitted). “Fame under the [dilution statute is not] a dollar test.” *Id.* at *5. Establishing fame

requires a showing that “the *general consuming public* would recognize the mark.” *Id.* at *5 (emphasis added). But Plaintiffs have no evidence that the *general public* recognizes their marks.

And registration of a mark is inconclusive as to fame; millions of non-famous marks are registered. *Car Freshner Corp. v. Am. Covers, LLC*, 419 F. Supp. 3d 407, 448 (N.D.N.Y. 2019) (citing McCarthy on Trademarks, §24:106 at 24-293 (4th Ed.) (“[O]ne cannot logically infer fame from the fact that a mark is one of the millions on the federal Register.”)).

Conspicuously absent from Plaintiffs’ evidence is any non-anecdotal or non-de-minimis evidence of actual recognition of “diesel” as one of Plaintiffs’ trademarks outside of Plaintiffs’ industry. Without any evidence of *widespread recognition*, a reasonable factfinder could not find *widespread recognition*.

Additionally, as explained above in detail in the discussion of fair use, Diesel Power Gear’s use of “diesel” is protected under the dilution statute as a “descriptive fair use.” 15 U.S.C. § 1125(c)(3)(A) (providing that “any fair use[,] including a nominative or descriptive fair use,” is “not [] actionable as dilution by blurring”).

F. Plaintiffs have no evidence of bad faith or actual confusion as required for New York unfair competition.

Diesel Power Gear did not engage in New York unfair competition for at least three reasons: (i) Diesel Power Gear’s use of “diesel” is not likely to confuse consumer, (ii) Diesel Power Gear has not used “diesel” in bad faith, and (iii) Plaintiffs have no evidence of actual confusion.

New York unfair competition “is subject to the same analysis as a Lanham Act claim, except for the additional requirement[s] of bad faith” and proof of actual confusion is necessary if money damages are sought. *Bobcar Media, LLC v. Aardvark Event Logistics, Inc.*, No. 16-CV-

885 (JPO), 2020 WL 1673687, at *9 (S.D.N.Y. Apr. 6, 2020); *see also WM Int'l, Inc. v. 99 Ranch Mkt. #601*, 329 F.R.D. 491, 499 (E.D.N.Y. 2019) (New York unfair competition requires bad faith). Additionally, for New York unfair competition, “proof of actual confusion is necessary if money damages are sought.” *Wolo Mfg. Corp. v. ABC Corp.*, 349 F. Supp. 3d 176, 207–08 (E.D.N.Y. 2018) (internal quotation marks and citation omitted).

Diesel Power Gear is not liable for New York unfair competition for at least the same reasons as for federal unfair competition. Additionally, other than the possibility that Diesel Power Gear’s graphic designer may have been aware of Plaintiffs in the past, Plaintiffs have no evidence that Diesel Power Gear used “diesel” in “diesel power gear” in bad faith. On the contrary, the evidence shows that Diesel Power Gear used “diesel” for the sole purpose of referencing diesel trucks and apparel and gear related to diesel trucks. A reasonable factfinder could not find bad faith.

As for actual money damages, Plaintiffs have admitted that they have no evidence of actual confusion.

G. Lost profits are not available as damages.

Even if Plaintiffs prove liability, they cannot obtain Diesel Power Gear’s profits as damages because any alleged infringement was not willful. Recovery of an infringer’s lost profits requires showing willful infringement—also referred to as willful deception or bad faith. *4 Pillar Dynasty LLC v. New York & Co., Inc.*, 933 F.3d 202, 206, 209-15 (2d Cir. 2019); *George Basch Co. v. Blue Coral, Inc.*, 968 F.2d 1532, 1540 (2d Cir. 1992). “Conduct is willful if the infringer was knowingly and deliberately cashing in upon the good will of the infringed.” *PlayNation Play Sys., Inc. v. Vex Corp.*, 924 F.3d 1159, 1170 (11th Cir. 2019) (internal quotation marks and citation omitted). But Plaintiffs’ only evidence of willful deception is that

Diesel Power Gear’s graphic designer may have been aware of Plaintiffs at some point in the past. This is insufficient for a factfinder to determine that Diesel Power Gear willfully infringed. Plaintiffs will likely point to Diesel Power Gear’s continued use of “diesel” after receiving a cease and desist letter from Plaintiffs. But this Court has made it clear that “a defendant's refusal to abandon a mark in the face of a cease and desist letter cannot demonstrate bad faith standing alone. If a defendant reasonably believes its mark does not infringe plaintiff's, she does not act with the requisite intention of capitalizing on plaintiff's reputation and goodwill.” *O’Keefe v. Ogilvy & Mather Worldwide, Inc.*, 590 F. Supp. 2d 500, 525 (S.D.N.Y. 2008) (internal quotation marks and citation omitted). No evidence suggests that Diesel Power Gear was ever trying to “cash in” on Plaintiffs’ good will.

III. CONCLUSION

The Court should grant summary judgment to Diesel Power Gear on all Plaintiffs’ causes of action because a reasonable factfinder could not find in Plaintiffs’ favor. Diesel Power Gear’s use of “diesel” is not trademark infringement (registered or unfair competition) because (i) using “diesel” descriptively to refer to diesel trucks is a protected fair use, (ii) mutually exclusive trade channels precludes consumer confusion, and (iii) for New York unfair competition Diesel Power has not used “diesel” in bad faith and Plaintiffs have no evidence of consumer confusion. Plaintiffs cannot prevail on dilution-by-blurring because their circumstantial evidence shows niche fashion-industry fame at most. Finally, even if the Court found infringement or unfair competition, lost profits are not available as damages Plaintiffs have no evidence of willful infringement.

DATED: October 19, 2020

/s/ Joseph Shapiro

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